

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

WNET, THIRTEEN, FOX TELEVISION STATIONS, INC., TWENTIETH CENTURY FOX FILM CORPORATION, WPIX, INC., UNIVISION TELEVISION GROUP, INC., THE UNIVISION NETWORK LIMITED PARTNERSHIP, and PUBLIC BROADCASTING SERVICE,

ECF Case

Case No. 12-civ-1543

*Plaintiffs,*

[Related Case No. 12-civ-1540]

V.

AEREO, INC. f/k/a BAMBOOM LABS, INC.,

*Defendant.*

**DECLARATION OF DAVID SINGER**  
**IN SUPPORT OF FOX'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT**  
**RE DIRECT LIABILITY FOR WATCH NOW COPIES**

I, David Singer, declare as follows:

1. I am an attorney licensed to practice law in the State of California, and I am a partner at the law firm of Jenner & Block LLP, attorneys of record for plaintiffs Fox Television Stations, Inc. and Twentieth Century Fox Film Corporation (collectively, "Fox"). I submit this declaration in support of Fox's Motion to For Partial Summary Judgment. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would testify competently to such facts under oath.

2. On May 15, 2013, I visited Aereo's website at [www.Aereo.com](http://www.Aereo.com) and took screenshots. Attached as **Exhibit A** are copies of screenshots from Aereo's website.

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3. Attached as **Exhibit B** are copies of excerpts from Aereo's responses to the WNET Plaintiffs' Requests for Admission and Supplemental Requests for Admission.

4. Attached as **Exhibit C** is a copy of excerpts from Joseph Lipowski's April 9, 2013 deposition.

5. Attached hereto as **Exhibit D** is a copy of excerpts from Joseph Lipowski's April 22, 2012 deposition.

6. Attached hereto as **Exhibit E** is a copy of excerpts from Joseph Lipowski's May 18, 2012 declaration.

7. Attached hereto as **Exhibit F** is a copy of a screenshot from Aereo's website's that was authenticated by Aereo's counsel, David Hosp and attached as "Exhibit 16" to Mr. Hosp's declaration in support of Aereo's summary judgment motion. The screenshot is also available at <http://support.aereo.com/customer/portal/articles/446000-what-happens-when-i-tune-to-a-live-program> (last accessed on June 5, 2013).

8. Attached hereto as **Exhibit G** are (a) excerpts from the May 31, 2012 deposition of Paul Horowitz (Aereo's expert), and (b) excerpts from Mr. Horowitz's testimony at the April 24, 2012 preliminary injunction hearing in this matter.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 6th day of June, 2013 at Los Angeles, California.



David R. Singer

# **Exhibit A**

A screenshot of the Aereo website. The background is a dark image of a man in a red jacket holding a blue folder. The website layout includes a top navigation bar with links: Aereo, Using Aereo, How it Works, Available Channels, Supported Devices, Compare Plans, and Our Blog. On the right, there are links for 'Pre-register | Sign In' and a note 'Aereo is coming soon to select markets'. The main headline reads 'Watch Real, Live TV on the Internet. Finally.' followed by the sub-headline 'With Aereo you can now watch live broadcast television online. No cable required.' Below this is a section titled 'Aereo is Expanding!' with the text '22 new cities in 2013. Pre-register now to be first in line.' and a 'Pre-Register Now' button. The bottom section is divided into three columns: 'Watch Live TV' (accessing local over-the-air channels), 'Record for Later' (recording favorite shows to a remote DVR), and 'Nothing to Install' (using Aereo on mobile devices).

<https://aereo.com>

[Aereo](#) [Using Aereo](#) [How it Works](#) [Available Channels](#) [Supported Devices](#) [Compare Plans](#) [Our Blog](#)

[Pre-register | Sign In](#)  
*Aereo is coming soon to select markets.*

# Watch Real, Live TV on the Internet. Finally.

*With Aereo you can now watch live broadcast television online. No cable required.*

## Aereo is Expanding!

22 new cities in 2013. Pre-register now to be first in line.

[Pre-Register Now](#)

### Watch Live TV

Access your local over-the-air channels - all the major broadcast networks and over 20 other channels - in HD quality. [See all available channels.](#)

### Record for Later

Record your favorite shows to a remote DVR. Or discover new favorites with powerful search tools and social recommendations. All your recordings are saved "in the cloud" and can be viewed from any supported device.

### Nothing to Install

Use Aereo on your mobile devices - computer, tablet, or smartphone. There's no new equipment to buy or install. No downloads, no wires, and no clutter. [Click here to get started.](#)

Wednesday, May 15, 2013 10:34:46 AM



https://aereo.com/channels

Using Aereo How it Works Available Channels Support Devices Compare Plans Our Blog

Pre-register Sign in

Aereo is using cookies to enhance your navigation.

## Available Channels

The following over-the-air broadcast channels are accessible with an Aereo remote antenna.

<b>Major Networks</b>	CBS	NBC	FOX	ABC	The CW	PBS
<b>Syndicated Programs &amp; Movies</b>	ION	MyNetworkTV	This TV	Antenna TV	Bounce TV	Cozi TV
<b>Lifestyle &amp; Local Interest</b>	ION Life	The Live Well Network	NYC Life	NYC Gov		
<b>Children's Programming</b>	PBS Kids	Qubo				
<b>Spanish Language</b>	Telenundo	Azteca America	Teletienda	Univision	MundoFox	Alento Vision
<b>Asian Languages</b>	WMBC-TV	Christian Global Network Television	Sinovision	New Tang Dynasty Television		
<b>Additional Channels</b>	Bloomberg TV					

These additional channels are available at no extra charge to paid Aereo members.

Wednesday, May 15, 2013 10:50:29 AM

REDACTED PUBLIC FILING

http://aereo.com/a35

**Aereo** Using Aereo How it Works Available Channels Supported Devices Compare Plans Our Blog

Pre-register Sign In

*As soon as landing starts to serve you.*

## The Choice is Yours...

*If you live in New York, there's an Aereo plan that's right for you.*

	Try for Free	Day Pass	Monthly8	Monthly12	Special Offer! Annual
Access Live, Local TV	For one continuous hour a day.	One day at a time, no commitment.	As much as you want, as often as you like, from any supported device.		
DVR Storage Space	Live Only*	Pay 24 hours from time of purchase.	20 hours	40 hours	40 hours
Remote Antennas	Just One*	Two. So you can record two shows at once. Or watch one show while recording another.*			
Pause & Rewind	✓	✓	✓	✓	✓
Recurring Billing	✓	✓	✓	✓	✓
	<b>Free</b> <small>No credit card required to sign up.</small>	<b>\$1 /day+tax</b> <small>Plus 10 free days to watch whatever you've recorded.</small>	<b>\$8/month+tax</b> <small>And your second month is free.</small>	<b>\$12/month+tax</b> <small>And your second month is free.</small>	<b>\$80/year</b> <small>And get three extra months for free. That's just 17¢ a day!</small>
	<small>Sorry, Try for Free is not available after 11:45 PM.</small>	<small>Sorry, Day Pass is not available after 11:45 PM.</small>	<b>Select</b>	<b>Select</b>	<b>Select</b>

*Plus, invite your friends to join and earn a free month for each friend who signs up, up to three months.*

Wednesday, May 15, 2013 11:01:16 AM

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<https://my.aereo.com>

Aereo
Featured
Recordings

So You Think You Can Dance  
FOX WINTER 13 Today 8-11p

Record

Guide
Feed
Search
Settings
7

On Right Now  
WED 5/15 THU 5/16 FRI 5/17 SAT 5/18 SUN 5/19

Charlie Rose  
2 Broke Girls  
Dateline NBC  
American Idol  
The Middle  
Arrow  
Nature  
WWE Main Event  
The Negotiator

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Wednesday, May 15, 2013 5:17:33 PM

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https://my.aereo.com

Aereo Featured Recordings

**American Idol**  
WNRW 5 | Today at 5:00pm

Watch Now Record

Guide

On Right Now

WED 5/15	THU 5/16	FRI 5/17	SAT 5/18	SUN 5/19
Blooming Charles Rose				
2 Broke Girls				
Dateline NBC				
American Idol				
Family Tools				
Arrow				
Nature				
WWE Main Event				
The Negotiator				

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Wednesday, May 15, 2013 5:30:10 PM

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**American Idol**  
Season 12 | Today at 5:00pm

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**American Idol**

[Back](#)

### Two Finalists Compete

The finalists perform for the judges, Carly Rae Jepsen performs

**Today from 5:00pm to 6:00pm on WTTW 5**

Season 12, Episode 36  
First Aired 5/15/2013

[Watch](#) [Record](#)

Please note: Aereo's privacy policy and terms of service are available at [aereo.com/privacy](#). Aereo's privacy policy and terms of service are available at [aereo.com/privacy](#).

[Support Center](#)
[Sign Out](#)

**EXHIBIT B**  
**FILED UNDER SEAL**

EXHIBIT C  
FILED UNDER SEAL



EXHIBIT D  
FILED UNDER SEAL

EXHIBIT E  
FILED UNDER SEAL

## **Exhibit F**



Aereo | Support Center



# FAQ:Support Center

[Home](#) › [Watching](#) › [What happens when I tune to a ...](#)


## What happens when I tune to a live program?

Last Updated: Feb 05, 2013 10:50AM EST

When you tune to a live program from the Guide, you instruct your assigned antenna housed at the Aereo data center to tune to the channel the show is on and pass the digital broadcast stream to your remote DVR. The DVR consists of several components that process the program stream and prepare it for you to stream it to your internet-connected device. Your DVR records the program as you watch it, giving you the ability to pause or rewind the live stream. When you record, you record three separate unique copies of the show, each in a different bit rate optimized for different streaming conditions. The lowest bit rate file is ideal for streaming over 3G connections. The medium rate file will work well over most Wifi connections. The highest rate file is intended for really fast broadband connections. While watching, you can choose the Video Quality on your device. If you select "auto" you will automatically choose the best bit rate for your current network conditions. When you are finished watching the show, your recorded files are removed from your DVR and do not count against your DVR storage space allotment.

☐ I found this article helpful

☐ I did not find this article helpful

Customer service software powered by Desk.com

## Contact Us

[Email Us](#)
<http://support.aereo.com/customer/portal/articles/446000>[5/14/2013 11:54:46 AM]

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EXHIBIT G  
FILED UNDER SEAL